

### **REMARKS**

As a preliminary matter, Applicant appreciates the Examiner's willingness to discuss the instant Restriction Requirement with Applicant's agent on October 7, 2008. During the telephone call, Applicant's agent informed the Examiner that claims 1-27, 33 and 34 would be amended to fall within with Group I as described in the Restriction Requirement.

Claims 1-46 were pending in this application. Claim 28 is herein cancelled and claims 1-27, 29-30 and 33-34 are herein amended. Claims 31, 32 and 35-46 are herein withdrawn. New claim 47 has been added. Support for new claim 47 can be found throughout the specification and the claims as filed. *No new matter has been added.*

Amendment and/or cancellation of the claims are not to be construed as acquiescence to any of the objections/rejections set forth in the instant Restriction Requirement, and were done solely to expedite prosecution of the application. Applicant reserves the right to pursue the claims as originally filed, or similar claims, in this or one or more subsequent patent applications.

### **RESPONSE TO RESTRICTION REQUIREMENT**

The Examiner has required restriction to one of the following inventions under 35 U.S.C. 121 and 372:

- Group I:** Claims 28-30, drawn to a method of treating a patient suffering from or susceptible to an RSV infection with benzodiazepine derivatives represented by the formula (I).
- Group II:** Claim 31, drawn to inhaler or nebulizer containing a benzodiazepine derivative.
- Group III:** Claim 32, drawn to composition comprising a benzodiazepine derivative and an anti-inflammatory compound.
- Group IV:** Claims 35-46, drawn to a compound of benzodiazepine derivative represented by formula (Ib) or its pharmaceutical composition.

Applicant hereby elects the invention covered by the pending Group I (claims 28-30, as well as currently amended claims 1-27, 33 and 34), for continued examination, *with traverse*.

Applicant traverses the Restriction Requirement on the ground that claims 1-27, 33 and 34, as amended, should be included within Group I. Particularly, Applicant respectfully brings

to the Examiner's attention that claims 2-27, 29-30 and 33-34 all depend from generic claim 1 either directly or indirectly and are all related to methods of treating RSV infections by administering a compound which falls within the general formula of Formula I. Claims 1-27, 33 and 34 have been amended herein to be in "method" format.

Applicant reserves the right to traverse the restriction between the elected and withdrawn groups in this or a continuing application. Applicant further reserves the right to pursue the non-elected groups in one or more divisional applications.

Applicant further elects the following disclosed species for searching purposes only: (S)-4-Fluoro-N-(2-oxo-5-phenyl-2,3-dihydro-1H-benzo[e][1,4]diazepin-3-yl)-2-piperidin-1-yl-benzamide.

This species is generically covered by claim 1 and specifically covered by claims 42 and 47. It is Applicant's understanding that the species election is for searching purposes only, and upon a finding of allowability of the elected species, the remaining species will also be searched.

**CONCLUSION**

Applicant believes that no additional fees are due. However, if any additional fees are due, please charge our Deposit Account No. 12-0080, under Order No. NV2-019US, from which the undersigned is authorized to draw.

If a telephone conversation with Applicant's agent would help expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

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Respectfully submitted,

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